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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,167

10/20/2003

Heinz H. Busta

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11/08/2005

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EXAMINER

PRENTY, MARK V

ART UNIT

PAPER NUMBER

2822

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/689,167	Applicant(s) BUSTA, HEINZ H.	
	Examiner MARK PRENTY	Art Unit 2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-57 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 10 is/are rejected.
- 7) ☒ Claim(s) 3 and 6-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This Office Action is in response to the response filed on October 31, 2005.

Claims 1, 2, 4, 5 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent 6,876,482 to DeReus.

With respect to independent claim 1, DeReus discloses a MEM device (see the entire reference, including the Figs. 1-4 disclosure, for example), comprising: a movable micromachined structure 108; and a diamond material 118 disposed along a surface of said micromachined structure (see the sentence bridging columns 9 and 10), said diamond material defining an abrasion resistive contact area (see column 9, line 50, through column 10, line 41).

Claim 1 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 2, DeReus's MEM device operates as a switch (see DeReus's claim 41, for example).

Claim 2 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 4, DeReus's movable micromachined structure 108 comprises a lever mechanism.

Claim 4 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 5, DeReus's movable micromachined structure 108 comprises a ribbed lever mechanism (note layers 114 and 122).

Claim 5 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 10, DeReus's diamond material (i.e., bump 118) is disposed along a surface of said movable micromachined structure wherein said surface is subject to abrasion (see column 9, lines 46-62).

Claim 10 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

Claims 3 and 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art of record if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-57 are allowable over the prior art of record.

The applicant's argument with respect to the maintained rejection of claims 1, 2, 4, 5 and 10 under 35 U.S.C. 102(e) as being anticipated by DeReus is incorrect. Specifically, the applicant remarks: "The 'diamond material' referred to by the subject Office Action, described in the DeReus patent as 118 in Figure 1, is a non-conductive standoff bump designed to prevent a stationary electrode from contacting a movable electrode (column 10, lines 35-41)," but such actually supports the rejection (indeed, the rejection explicitly relies on DeReus's column 10, lines 35-41, disclosure – see above). Specifically, the DeReus patent discloses at said column 10, lines 35-41: "First standoff bump 118 and the second standoff bump can contact stationary electrode 106 simultaneously to prevent stationary electrode 106 from contacting movable electrode 118 [sic, should be 114]. Alternatively, first standoff bump 118 and the second standoff bump can contact stationary electrode 106 before or after movable contact 120 contacts stationary contact 104" (emphasis added). Accordingly, the examiner respectfully submits that DeReus's diamond bump 118 clearly defines not only a "contact area," but an "abrasion resistive" one at that (diamond being notoriously hard).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Registered practitioners can telephone the examiner at (571) 272-1843. Any voicemail message left for the examiner must include the name and registration number of the registered practitioner calling, and the Application/Control (Serial) Number. Technology Center 2800's general telephone number is (571) 272-2800.


Mark V. Prenty
Primary Examiner